United StatesDepartment of Labor
Board of Alien Labor Certification Appeals
Washington, D.C. 20001

Date July 25, 1997

CASE NO.: 95 INA 128

In the Matter of:

SORRELL M. MATHES,
Employer

on behalf of

FRANCETTE MARIE-MICHELE RAMALINGUM,
Alien

Appearance: H. A. Tesoroni, Esq., of Newark, New Jersey

Before : Holmes, Huddleston, and Neusner
Administrative Law Judges

FREDERICK D. NEUSNER
Administrative Law Judge

DECISION AND ORDER

This case arose from an alien labor certification application filed on behalf of Francette Marie-Michele Ramalingum (Alien) by Sorrell M. Mathes (Employer) under § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the Act), and the regulations promulgated thereunder, 20 CFR Part 656. After the Certifying Officer (CO) of the U.S. Department of Labor at New York, New York, denied the application, the Employer and the Alien requested review pursuant to 20 CFR § 656.26.[1]

Statutory Authority. Under § 212(a)(5) of the Act, an alien seeking to enter the United States to perform skilled or unskilled labor may receive a visa, if the Secretary of Labor (Secretary) has decided and has certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified, and available at the time of the application and at the place where the alien is to perform such labor; and (2) the employment of the

[1]The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File (AF), and any written argument of the parties. 20 CFR § 656.27(c).

alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed. Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means to make a good faith test of U.S. worker availability.

STATEMENT OF THE CASE

On December 4, 1992, the Employer, Sorrell M. Mathes, filed for labor certification on behalf of the Alien, Francette Marie-Michele Ramalingum, to fill the position of "Household Cook, Live-in."[2] (AF 20). The job requirements were four years of high school and two years of experience in the job offered. The job offer entailed working Monday through Friday, 7:30 a.m. to 7:30 p.m., and Saturdays from 8:30 a.m. to 12:30 p.m. The job duties were described as follows:

> Plan menus, prepare food according to recipes, devise own menus, serve food, clean kitchen and all cooking utensils, purchase food stuffs, take complete charge of kitchen and dining area and prepare specialty dishes for Employer's home. Equipment to be operated includes: kitchen stove, microwave oven, cuisinart and dishwasher.

From September 1990 to the date of application, the Alien worked for the Employer as a Household Cook/Live-in. She worked for Mr. Terrin in the same capacity from June 1986 to September 1990, and for the Crespi family from September 1983 to May 1986. AF 15. The Alien's work for Mr. Terrin also included caring for two children.[3] AF 14. The work in the Terrin home job that the Alien listed to show her experience and other qualifications on ETA 750B was worded exactly as above. But for the preparation of specialty dishes for Employer's home, the housework included the following as additional duties:

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[2]DOT No. **305.281-010 Cook (Domestic ser.)**Plans menus and cooks meals, in private home, according to recipes or tastes of employer: Peals, washes, trims, and prepares vegetables and meats for cooking. Cooks vegetables and bakes breads and pastries. Boils, broils, fries, and roasts meats. Plans menus and orders foodstuffs. Cleans kitchen and cooking utensils. May serve meals. May perform seasonal cooking duties, such as preserving and canning fruits and vegetables, and making jellies. May prepare fancy dishes and pastries. May prepare food for special diets. May work closely with persons performing household or nursing duties. May specialize in preparing and serving dinner for employed, retired or other persons and be designated Family-Dinner Service Specialist(domestic ser.).

[3]The Employer's affidavit attached to the application said the Alien's work for Terrin was as a Household Cook/Domestic Service Worker.

> ...and clean and dust, vacuum, iron and care for two children (10 & 13 years of age). Equipment operated included: kitchen, stove, microwave oven, cuisinart, dishwasher, vacuum cleaner and washer & dryer.

AF 15. Similarly, the job description for the Crespi household listed the above, except for the child care work.

Notice of Findings and Final Determination. The CO's May 18, 1994, Notice of Findings (NOF) notified the Employer that certification would be denied subject to rebuttal for the reasons stated therein. The CO's primary reason was that while the Employer required two years of experience as a Domestic Cook for the performance of the job, the Alien did not have that experience before she worked for Employer. On examining the job descriptions for the Alien's former employment with Terrin and Crespi the CO found that they were properly classified as a "Houseworker, General." AF 64. Observing that the Employer apparently had trained the Alien, the CO directed the Employer to document the reasons it was not feasible for him to train a U. S. worker or, in the alternative, to submit evidence clearly showing that at the time of hire the Alien had the qualifications that the Employer now requires for this position. As an alternative to submitting such proof, the Employer was told that he could reduce the requirements and readvertise the job.

Rebuttal. The Employer's rebuttal of June 21, 1994, added sufficient evidence to the record to rebut all issues noted in the NOF except the issue discussed above, according to the August 11, 1994, Final Determination (FD). AF 71.

Although the Employer's rebuttal asserted that the Alien acquired her cooking experience while employed by Terrin and Crespi, the CO concluded in the FD that the Employer had failed to establish either (1) that the Alien had the two years of experience as a "Cook, Domestic Service" before she was hired, or (2) to document why it was not feasible to train someone else at this time or to reduce his requirements. The CO concluded that Employer's contention that the Alien learned how to cook while she was employed by Terrin and Crespi was not enough to qualify her as a Cook, Domestic Service, as the duties described for both positions were those of a Houseworker, General, with some cooking experience. After Employer requested review on August 17, 1994, the Appellate File was referred to the Board for action. AF 84.

DISCUSSION

Under 20 CFR § 656.21(b)(5) an employer is required to offer documentation to prove that its job requirements represent the employer's actual minimum requirements for the position at issue,

and that the employer has not hired workers with less training or experience for work similar to this job opportunity, or that it is not feasible for the employer to hire workers with less training or experience than this position requires.

In the NOF the CO notified the Employer in the instant case that the job descriptions for the Alien's previous two employers appeared to describe a Houseworker, General, and not a Domestic Cook. Employer was directed to "clearly [show] that the alien at the time of hire had the qualifications which the employer is now requiring." In rebuttal, Employer said the Alien "acquired her cooking experience while employed" by Terrin and Crespi. After the CO found that his statement did not constitute sufficient documentation, Employer's request for review contended that (1) her ETA 750B work history proves that the Alien obtained the requisite experience while working for Terrin and Crespi; and (2) Employer added an affidavit to his original labor certification to certify that the Alien worked as a household cook/domestic service worker for Terrin from 1986 to 1990.

While the job descriptions for the Alien's prior work are identical to the duties of this position, those earlier jobs also indicated that the Alien then was performing housework and that in one job she took care of the family's two children. As the work descriptions in the ETA 750 and in the Employer's affidavit are the only evidence of the Alien's prior work experience, it was reasonable for the CO to order the filing of added documentation on this issue.

The CO is not required to accept written statements provided in lieu of independent documentation as credible or true, but must consider them and give them the weight they rationally deserve. **Gencorp,** 87-INA-659 (Jan. 13, 1988)(en banc). In the NOF, the CO advised Employer that the documentation then of record was inadequate to prove that the Alien's prior experience as a cook was acquired when she worked for Terrin and Crespi. After examining the descriptions of these positions in the application, the CO found that both jobs appeared to be the work of a Housekeeper, General with cooking duties, and that neither was a position of a Cook, Domestic, the work experience that the Employer required of the U. S. applicants. As the Employer's rebuttal simply reiterated this documentation, he failed to provide independent probative evidence of the Alien's work experience.

Where the experience gained with a prior employer was not shown to be the type now required by the petitioning employer certification may be denied, even though the experience was acquired in work for an employer other than the petitioner. **Global Committee of Parliamentarians on Population and Development**, 88-INA-209 (March 12, 1990). In **Hunter College of the City of New York**, 88-INA-568 (Oct. 5, 1989), however, denial

of certification by the CO was upheld where the alien's prior experience was not confirmed by the former employer. In the instant case, however, no such confirmation was even sought, and the only evidence as to her job duties while working for Terrin and Crespi is in the applications of the Employer and the Alien. Yet, this CO has found that the Alien's description of her duties in those positions does not meet the Employer's criteria of the job at issue in this case even when the absence of corroboration is disregarded.

It is another general rule that an alien's assertion, without documentation, does not demonstrate that she satisfied the Employer's actual minimum requirement. **MITCO**, 90 INA 295 (Sept. 11, 1991). On the other hand the employer's unsupported statement that the Alien meets its minimum requirements does not constitute adequate documentation that the Alien meets those requirements, as in this case. **Wings Wildlife Production, Inc.**, 90 INA 069 (April 23, 1991).

The Employer's conclusory statement that the Alien is qualified is an insufficient response where the CO ordered documentation of the Alien's qualifications. **Cal-Tech Construction Co.,** 91 INA 148 (May 4, 1992). In this case, for example, the CO required proof that the Alien was qualified for the position at issue. The CO expressly directed the filing of documentation to establish her prior experience as a cook because the evidence submitted with the application was found to be insufficient. Moreover, this Employer no only failed to produce that proof, but he gave no indication that such information was unavailable or that he had attempted to obtain such required documentation as a statement from a prior employer, and that he was unsuccessful. After considering all of these reasons and the Appellate File, we agree that the CO's denial of Certification was supported by the evidence of record under the Act and regulations. Accordingly, the following order will enter.

ORDER

The Certifying Officer's denial of labor certification is Affirmed.

For the Panel:

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FREDERICK D. NEUSNER
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.

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Sheila Smith, Legal Technician

BALCA VOTE SHEET

CASE NO.: 95 INA 128

SORRELL M. MATHES, Employer,
FRANCETTE MARIE-MICHELE RAMALINGUM, Alien

PLEASE INITIAL THE APPROPRIATE BOX.

	CONCUR	DISSENT	COMMENT
Holmes			
Huddleston			

Thank you,

Judge Neusner

Date: June 10, 1997